THE NEW-YORK
CITY-HALL RECORDER.

VOL. I. *For August*, 1816. NO. 8.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday* the 5th of *August*, in the year of our Lord one thousand eight hundred and sixteen—

PRESENT,

The Honourable
JACOB RADCLIFF, *Mayor*,
WILLIAM AL BURTIS, *Alderman*.
JOSIAH HEDDEN, *Special Justice*.
JOHN RODMAN, *District Attorney*.
MACOMB, *Clerk*.

GRAND JURORS.

JOSHUA BARKER, *Foreman*.

NAPHTALI JUDAH,	AARON COE,
RICHARD CUNNINGHAM,	THOMAS HAYNES,
JOHN B. GRAMES,	G. W. SOMERINDYCK,
SYLVANUS F. JENKINS,	JAMES HALL,
CHARLES HOLT,	EDWARD R. JONES,
WILLIAM PATTERSON,	EPHRAIM CONRAD,
JESSE BALDWIN,	JOSEPH STRONG,

JONATHAN I. CODDINGTON.

(PERJURY—SUBORNATION OF PERJURY—FRAUD.)

JOHN FRANCIS AND JOHN JONES' CASES.

RODMAN & PRICE, *Counsel for the prosecution.*
HAWKINS & SIMONS, *Counsel for Francis.*

On the traverse of an indictment for Subornation of Perjury, where two witnesses on behalf of the prosecution, swear, that the testimony given by them on the former trial, was false; their wives' testimony is not admissible to impeach that of their husbands, either directly or collaterally.

In such case, it is not necessary, on behalf of the prosecution, either to prove the Perjury or Subornation by two other witnesses; and, although it would be unsafe to rely solely on the testimony of witnesses, who swear that they committed perjury, yet it is the duty of the Jury, to examine and weigh the whole circumstances of the case, and give credence to such testimony, should they find it confirmed.

The affidavit of one of the Jurors, after the verdict has been regularly entered, will not be received by the Court, on a motion for a new trial, to impeach such verdict.

The consideration of the *punishment* of a crime, should never influence a verdict in a criminal prosecution; punishment is the province of the Court, not of the Jury.

It is necessary, however, for all men *to know* that he who suborns a witness to commit perjury, on a trial where he is charged with receiving stolen goods, for the base purpose of screening himself from a merited punishment, and who, on the traverse of the indictment for Subornation of Perjury, either by himself or his agents, employs *another instrument* to support the former Perjury, is liable to be imprisoned *more than twenty days*, and *may be* imprisoned ten years in the State Prison. (1 vol. N. R. L. p. 412. § xx.)

A Counsellor who swears, that he knows nothing concerning a former cause, except what has been imparted to him in professional confidence by his client, will not be permitted to prove, that a *receipt* adduced in such trial as evidence, purporting to bear date before such trial, was *manufactured* to answer the *purposes* of the defence, even should the Counsel for the prisoner consent to admit such testimony.

Receivers of stolen goods, panders of villany, attend; ye who extend the lure of temptation to the ignorant, the infamous, and the abandoned, to minister to your accursed avarice; too cowardly yourselves to break and rob your neighbour's dwelling, you, nevertheless, hold forth the rewards of burglary and robbery in your hands, and invite others to the commission of crimes, of which you are equally responsible—doubly guilty. Shrouded in darkness, the thief approaches—you behold your neighbour's property plundered by the villain—he offers it to *you* a great bargain; you are alone—no eye sees you—no ear hears you—you imagine yourselves secure.

You say in your heart: "This will be $100 in my pocket—True, the fellow stole it, but how can they prove that I knew it? I shall gain $100—I shall heap gain on gain—I shall shortly become rich—should any accident take place, I know the means by which I can clear myself—A little *money* will procure proof of any thing—I know from whom. Conscience lie still—I shall gain $100."

Yes, ye may soothe and flatter yourselves in your vain imaginations; ye may from time to time accumulate your ill-gotten gains: nay, more, ye may become rich; ye may, indeed, acquire a pitiful influence over the needy miscreant, who has not the fear of God before his eyes, and induce him to *swear* to any thing you may propose, or that ingenious counsel may consider necessary to be sworn, to defeat a righteous prosecution. He may, indeed, *swear*, and by *such swearing*, you may be acquitted. From that moment, he seals your damnation; from that moment, you have not only adopted his infamy, his crimes—but you have placed yourself in his power. Is this all? You have mocked the awful majesty of that God, who now abandons you to the powers of darkness and despair—that God, whose eye penetrated even the dark recesses of your dwellings—the darker chambers of your souls, and all their secret operations—that God, whose ways are mysterious; who suffers iniquity to succeed to triumph for a season, but, in the language of the Hebrew bard, has set the wicked in slippery

places, to cast them down in destruction*—that God, in fine, who can make even the false, hollow schemes, contrived by you to evade a merited punishment, the instruments of defeat and detection, whose awful purposes cannot be frustrated, and whose omnipotent finger writeth *MENE TEKEL* on that wall, which alone witnessed your secret machinations.

Receivers of stolen goods, attend then to the *EXAMPLE* the *Recorder* is about to exhibit: learn that *crime is the parent of crime;* and that all the *devices of villany*, to which you may resort, to evade a just punishment, will recoil on your own heads and become the very instruments of your detection and defeat.

The prisoner, John Francis, was indicted during the last term for Subornation of Perjury; for that he, the said John Francis, being a wicked and evil-disposed person, not having the fear of God before his eyes, but being *moved and seduced by the instigation of the devil*, on the 25th day of May then last past, at the city and county of New-York, did persuade, induce, and instigate *James Williams* and *John Millet*, to commit wilful and corrupt perjury at a Court of General Sessions of the Peace, to be holden in and for the city and county of New-York, at the City-Hall, before the Honourable Jacob Radcliff, Mayor, and John B. Coles and Jonas Mapes, Aldermen of the said city, on the fourth day of June then last past.

The indictment further alleged, that the said *James Williams* and *John Millet*, by reason of such inducement and persuasion, did appear as witnesses in favor of the said John Francis, in a certain cause or prosecution, then and there pending against him, for receiving certain stolen goods, (consisting of two pieces of cloth) knowing them to be stolen, and, on the said trial, it became a question material to the issue, *whether the said cloth was fairly and honestly purchased by him the said John Francis*. And the said James Williams and John Millet did, on the said trial, depose and swear that "they were present at the store of the said John Francis, in the morning about nine or ten o'clock, when a certain black or colored man came to the said store with two pieces of cloth, and offered them for sale to the said John Francis, and demanded six dollars a yard for the said cloth, and that thereupon, he, the said John Francis, took a sample of each of the said pieces of cloth, and went out to inquire the value of the same, and soon after returned to the said store, and then and there agreed to and with the said black or colored man, who had the cloth, to give him $4 a yard for the same—And, further, that they, the said James William and John Millet, after the said John Francis had returned to the store aforesaid, and had agreed to give the said black or colored man $4 a yard for the same, saw the said John Francis count out and pay to the said black or colored man, the money for the said cloth, amounting to upwards of $100; and that, afterwards and before the said black or coloured man had left the store aforesaid, they, the said James Williams and John Millet, *saw the said John Francis write a bill, or receipt, for the said cloth, and the money paid for the same, and also saw the said black or colored man, sign the said receipt by making his cross to the same.*"

The perjury thus assigned in the indictment, was in perfect conformity with the testimony of Williams and Millet on the former trial, except that one of these witnesses only, swore that *he saw the receipt executed by the black man.* This receipt was produced on the former as well as on this trial. It was in the handwriting of Francis, and bore evident marks of a hurried, perturbed mind. It was written within a small compass, and the blank paper, which the written part touched, when the receipt was folded up, was blotted in divers places, as if it had been rapidly written and immediately folded. It was in these words and figures:

"New-York, 18*th May*, 1816.
Mr. Francis Bot of Robertson
2 Pieces cloth 25 1-4 yards $4 - $101
Rec'd in full ⋈ Robertson."

On the traverse of the indictment for Subornation of Perjury, James Williams and John Millet, both of whom had been indicted for perjury, and were then prisoners in Bridewell, were sworn as witnesses on behalf of the prosecution. Williams swore that he lived near Francis, and that Millet came for him to go to Francis' house, and told him that each of them would be paid $50 for swearing to a matter which Francis wanted to prove in court.

Williams further swore, that when they arrived at the house of Francis, they found the prisoner and John L. Bogardus in the back room, and that Bogardus was then engaged in writing. Williams was then asked, if he would become a witness, and the substance of the matter necessary to be sworn was explained to him by Bogardus. Williams objected, and told them, that he did not wish to swear to things he knew nothing about, and that he was afraid of getting into difficulty; but Bogardus said, that it was nothing, and if any difficulty took place, he would get them clear. Bogardus wrote a paper, to which he put his mark, and went with Millet and Francis, before Alderman Buckmaster, and Millet and himself swore to the facts contained therein; that paper was not read or explained to him. He stated further, that on the former trial, he swore to the facts in substance above assigned as perjury in the indictment; which several matters *were put into his mouth*, and were utterly false; for that

* Psalm lxxiii. verses 17, 18. Until I went into the sanctuary of God; then understood I their end. Surely thou didst set them in slippery places; thou castest them down in destruction.

he was never present in the store, when a black man, or any other person, brought in two pieces of cloth, &c.

Francis told him, that he would pay him for his time; and for his services had made him a present of a waistcoat, which he then had on; that he never made any confession of the perjury, until he was brought into the Police, and that the Constable who arrested him, told him that, if he confessed it, he would probably get clear; that he did not tell his wife, that he saw the black man sell the cloth to Francis, with the other facts to which he swore, as above stated.

John Millet swore, that Francis sent for him by Williams, before Bogardus came, and that Francis instructed him what to swear. This witness coincided with Williams in several particulars, but contradicted him in others; but considering the light in which the testimony of these witnesses should be viewed, hereafter stated in the charge of the Court, we deem it unnecessary to state the points of coincidence or contradiction of their testimony.

James Warner, one of the Police magistrates, being sworn as a witness on behalf of the prosecution, stated, that the prisoner, on the morning of the trial, without any solicitation, said that Bogardus had brought him into this difficulty, by what he had done in relation to the affidavit made by the black men, Williams and Millet; and that he wanted to go before the Grand Jury, and complain of Bogardus. Afterwards, the prisoner came to this magistrate with Bogardus, and explained his meaning to be, that he thought that Bogardus had advised wrong, in having the matter sworn to by these black men, *put down in writing in an affidavit*, and not that Bogardus had advised him to induce them to swear false.

Bernard O'Blenis, the Clerk of the Police, on being sworn as a witness on behalf of the prosecution, stated that the prisoner, after his arrest, told him, that he was an ignorant man, and that Bogardus had brought them all into this difficulty, having engaged Williams and Millet to swear false. He wanted to go before the Grand Jury, and complain of Bogardus. Afterwards, the prisoner came to the witness, and told him, that he derived the information, upon which the charge against Bogardus was founded, from Williams.

Here the Counsel on behalf of the prosecution, offered Dr. Graham as a witness, to prove that the *receipt*, bearing date on the 18th of May, above set forth, was executed after the arrest of the prisoner, on the charge for receiving stolen goods; that when it was put into the hands of the Doctor, who was one of the Counsel for the prisoners, it was then recently executed, and *the ink was not then dried;* and that the said receipt was *manufactured* expressly to answer the purposes of the defence.

Dr. Graham, on being sworn, said, "I know nothing concerning this transaction, except what was imparted to me in professional confidence, by my client: his secrets are locked in my breast, and will perish with me."

The Counsel on behalf of the prosecution contended, that the fact offered to be shown by the Doctor, was one not guarded by his privilege as Counsel. The evidence of the existence or execution of deeds, and other instruments, known only by Counsel, could not be withheld by him, because not necessarily imparted to him in his professional character.

Hawkins & Simons, contra, first argued against the admission of the testimony, but afterwards waived the objection, and even urged the court that the witness might not be guarded by his privilege.

By the Court. Had this been a deed or other *valid instrument*, to the execution of which, the witness now offered was cognizant, notwithstanding he had been Counsel in the cause, where such instrument was used, he would not be guarded by his privilege; but here the case is different:—A receipt, alleged to be false, *contrived to answer the purposes of a defence*, has been put into the hands of the witness in professional confidence, and the Counsel is now called on to state the circumstances under which that instrument was put into his hands. We think the testimony inadmissible.

James Hopson, one of the Police magistrates, who was called as a witness on behalf of the prosecution, proved, that on or about the time of the arrest of the prisoner, on the charge of receiving stolen goods, at the time the prisoner was on his way to the Police, and before he was examined on that charge, the prisoner voluntarily confessed to him, that at the time the cloth was purchased, *no person was present, and no bill or receipt was given.*

John M'Manners, a witness on behalf of the prosecution, proved, that on the morning of this trial, on going down Vesey-street, with the prisoner, he said, that Bogardus had brought him into all his difficulty.

Peter H. Legget, from whom the two pieces of cloth, one of which was black and the other olive, were stolen, was called, and affirmed as a witness on behalf of the prosecution. He stated, that he heard the prisoner make the same declaration in relation to Bogardus, as imputed to him by the last-mentioned witness, and that he mentioned it to Bogardus, and went with Bogardus to the prisoner, who then acquitted him of all blame; that the prisoner is a man of that weak, agitated frame of mind, that he is apt to state any matter which may be suggested, or assent to any matter which another may state as a fact, without any consideration. From the testimony of Legget, in relation to the affidavit taken before Alderman Buckmaster, before mentioned, it appeared, that about a week before the affidavit was made, Bogardus came to his store, on behalf of Francis, and

stated to him what Francis could prove, in relation to the purchase of the cloth. Legget told Bogardus, that he wanted proof that the cloth was fairly purchased by Francis, and Bogardus offered to procure the affidavit for his satisfaction, which was accordingly procured and brought to him; and that it contained the same facts, in substance, that Williams and Millet stated on the former trial.

The defence of the prisoner was opened by Hawkins, who stated, that he expected to prove, that the testimony of Williams and Millet, on the former trial, was *true*, and that their testimony adduced on this trial, was *false*. For the purpose of *impeaching their testimony*, he offered their wives to show, that Williams and Millet had each mentioned frequently to their wives, that they saw the black man in the store of the prisoner, sell the cloth in the manner stated in their testimony.

Rodman and Price objected to the testimony offered, and after the arguments of Counsel, it was overruled by the Court, on the ground that it was contrary to the sound policy of the law, to permit the wife to impeach the testimony of her husband, either directly or collaterally. Domestic peace ought not to be infringed; the testimony offered is calculated to produce that evil.

Mary Miller was then called, and sworn as a witness on behalf of the prisoner. It ought here to be observed, that the wife of the prisoner was present during the trial, frequently consulted him, and appeared very anxious for his acquittal. Many tears were shed, all which was natural, very natural.

Mary Miller *swore*, that she was married *on the 15th day of May last*, at the house of the prisoner, and she produced her marriage certificate, which was of that date; that Millet played on the fiddle, at her wedding, and that the next day, which was Thursday, Williams and Millet both came and were treated by her; they were both present in the store of the prisoner, on that morning, when a black man came and offered the cloth for sale. At that time, there were many people in the store: the prisoner took a sample and went out, and shortly after returned, and purchased the cloth. This witness was positive as to the time, particularly from the circumstance of her marriage, and the certificate thereof. She is *a particular friend of the prisoner's wife*; and at the time of the marriage, and about three weeks after, lived in an upper room of the house of the prisoner, and then went out to service in Cross-street.

Legget being again called, stated, that according to his best recollection, without referring to his papers, the inventory of all his stock of goods was made on the 15th, and that the cloth could not have been, and was not stolen until the next day in the afternoon. He could tell, however, with certainty, could he be indulged by the Court, in referring to his papers. The Court, considering this an important point in the testimony, gave the witness leave to satisfy himself by such reference, and in the mean time took a recess. After the court and jury met, the witness stated, that he had referred to written documents, which enabled him to state positively that the inventory of goods, including those stolen, was made on *Thursday, the* 16th, and that the goods were not stolen, until the next day, in the afternoon, but might have been afterwards. He advertised, that the goods were stolen on *Friday* or *Saturday*, supposed to be by a *black man*, who had been seen in the cellar, where the goods were. He offered a reward of $50, and Paul Durando, a tailor, to whom the prisoner sold one of the pieces, gave the witness information, and he then procured a search-warrant, and in company with James Hopson and Abner Curtis, went to the house of prisoner, who first denied that he had any cloth of that description; and after it was found in a trunk, which was broken open by the officers, the prisoner said, that his wife brought it from Charleston.

John L. Bogardus, a witness on behalf of the prisoner, on being sworn, stated, that he was employed by the prisoner as Counsel, previous to the former trial, who stated to him what he was able to prove, in relation to the purchase of the cloth alleged to have been stolen from Mr. Legget. The witness called on Legget, and stated to him the information delivered from the prisoner. Legget wished some proof, that the cloth was fairly purchased by the prisoner, and the witness agreed to procure an affidavit to satisfy him.

At the time the affidavit was written, Williams and Millet were both present, and related their stories before the witness wrote the affidavit; and after it was written, it was read and explained to them, section by section, to which they fully assented, and went with the witness before Alderman Buckmaster, and swore to the same. The affidavit was afterwards examined by Mr. Legget, who appeared to be satisfied, and promised to use his endeavors to have the prosecution against the prisoner discontinued.

At the time of writing this affidavit, Williams and Millet, or one of them, expressed a reluctance at making the same, for fear they should get into some difficulty by attending court, or otherwise; and not because they were afraid of swearing to matters not true. The witness told them, they could come into no difficulty by swearing to the truth, as they were bound to do, and if they did, he would see that they were cleared, or words to that effect. He also explained to them, the object of the affidavit. The prisoner did not show him the receipt at that time, nor did he know of its existence until after the examination of the prisoner, in the Police.

Samuel Hawkins, a witness on behalf of the

prisoner, on being sworn, stated, that after Millet had been apprehended on the charge of perjury, he wrote a letter to the witness from Bridewell, which letter the witness read. In one part of the letter, Millet, in addressing himself to the witness as his counsel, on whom he relied, states, that he "is not guilty in that cause;" meaning (as was concluded) that he was not guilty of the perjury. This witness also stated, that he was acquainted with Millet, who was a soldier in the same reigment which the witness commanded during the war, and that his character was good.

Abner Curtis, one of the Police officers, on being sworn as a witness on behalf of the prosecution, stated, that when he went with Hopson and Legget, with a search-warrant, to the house of the prisoner, he denied that he had any cloth whatever in the house. The cloth was, on searching, found in a trunk, in the back of the house, which was broken open, and the prisoner then said it was brought from Charleston. At this time, he said nothing about the purchase from *a black man, or the receipt;* but after he was carried to the Police, told that story. The prisoner kept a small grocery, at No. 67 Bancker-street.

Leggett, on being again called, substantially corroborated the above statement.

Here the testimony on both sides closed. The Counsel for the prisoner, contended to the court and jury, on divers grounds, that he ought to be acquitted. 1st. The Subornation of Perjury, charged in the indictment, had not been proved by two credible witnesses; Williams and Millet, the only persons who swear to the fact, stand impeached, and no reliance can be placed upon their testimony.

2d. The testimony on behalf of the prisoner, and the circumstances in the case show, that Williams and Millet have been induced to swear *false*, on this occasion, and that their testimony on the former trial was *true*. One of the Counsel, under this head, poured forth a torrent of invective against the Police, unsupported by testimony; and on being interrupted by one of the Police magistrates, who attended the trial, and had been sworn as a witness, was stopped by the Court, and ordered to confine himself to the evidence.

3d. It does not appear from the testimony of Williams and Millet, allowing it to be true, that the *procurement* proceeded from the prisoner. He offered no reward; he held forth no inducement; and if they committed perjury, they did it voluntarily, and without motive.

Rodman & Price, contra.

By the Court, delivered by his Honor the Mayor:

Gentlemen of the Jury,

After the minute and tedious investigation, which this cause has undergone, the court is aware, that you will not wish to hear a detail of the whole mass of testimony adduced before you. Still, as the offence in its nature is atrocious, as it strikes deep at the root of those important obligations, which are held sacred and cherished in society, it is incumbent on us to review the leading features of the case, in determining on the guilt or innocence of the prisoner.

The prisoner at the bar, stands charged with having procured James Williams and John Millet, to commit wilful and corrupt perjury, on the trial of a cause in this court, on the fifth day of June last, wherein the prisoner was charged with receiving stolen goods, the property of Peter H. Legget.

This offence is denominated Subornation of Perjury, which consists in procuring another to take a false oath, amounting to perjury, where the person thus procured actually takes such oath.

In a prosecution for perjury, the falsity of the oath must be proved by at least two witnesses, because it is necessary, that such oath should be overbalanced; but in this case, where the two witnesses, whose oaths are alleged to be false, confess the perjury, the rule applicable to perjury, or the reason of such rule, does not apply. This case, in the opinion of the court, stands on a different ground from perjury itself, with regard to the mode of proof.

Standing by itself, the testimony of Williams and Millet is subject to every objection raised by the prisoner's Counsel. These witnesses stand before us corrupt by their own showing, and under the influence of favor necessarily resulting from their situation. Though the law has pronounced these competent witnesses, the court is bound to say, that it would be wholly unsafe to rely on their testimony unless strongly fortified.

It is necessary for us, then, to examine the facts and circumstances disclosed on this trial, independent of their testimony, to ascertain whether the material allegations contained in the indictment are supported. The perjury assigned in the indictment, may be reduced under three distinct heads:

1st. That the prisoner purchased the goods,

2d. That he paid upwards of $100;

3d. And that a receipt was given by the black man, from whom the goods were purchased. Either of these were material to the issue on the former trial; and if either were false, perjury was committed; whether by the procurement of the prisoner, is the important question for your determination. To determine this, it will be the duty of the jury, carefully to weigh and examine all the facts and circumstances in the case. The false declarations of the prisoner to the Police magistrates, his efforts to conceal the property, his inconsistencies and contradictions when it was found in his possession, operate strongly against him. It is the province of the jury alone, to determine, whether this is the conduct of an honest man, who had fairly and honestly purchased

property. Before he was carried to the Police, he declared to Alderman Hopson, that he took neither a bill nor receipt; and he stated expressly, that no person was present when he purchased the property. It was not until his arrival in the Police, that he gave the account concerning the purchase which he supported on the former trial, by means of which he was acquitted by the jury.

The declarations made by the prisoner this day, to Mr. Warner and others, in relation to Bogardus, in the opinion of the court, ought not much to be relied on, by reason of the explanations made by the prisoner, and by Bogardus in his testimony, and although it is somewhat unusual for counsellors of this court, to transact business of the nature that Bogardus did, at a distance from their office; yet, as he has explained the part taken by him in this affair, it does not appear that he is liable to censure.

There are two important points of view in which this case may be considered. 1st. Mary Miller swears positively, that it was on the *sixteenth day of May*, in the forenoon, that the black man brought the cloth into the store of Francis, when the purchase took place, in her presence, and that of Williams and Millet. She refers to her marriage, and the certificate thereof, as circumstances by which she fixes the date. You have heard the testimony of Legget, who, during the recess, by referring to written documents, was enabled to state with certainty, that an inventory of his goods was taken *on that day*, and that the cloth could not have been stolen, until the *seventeenth*, in the afternoon, and probably afterwards. The testimony of Mary Miller, is the most important of any adduced on the part of the prisoner, and it is your province exclusively, to judge of her credibility. If by a reference to all the facts and circumstances in the case, it should be found, that what she swears cannot be true, this lamentable fact would follow, that this prisoner or his agents, has accumulated perjury on perjury, crime on crime, to evade punishment.

2d. A receipt, adduced and sworn to by Williams and Millet, on the former trial, has been produced before us on this trial. This receipt stands on different ground from any other evidence, to which the court has directed your attention. It bears date on the *eighteenth* day of May, last past. Bogardus, who was employed by the prisoner to draw the affidavit to satisfy Legget, the owner of the goods, knows nothing about this receipt. It will be recollected by you, that Legget affirms, that he advertised that goods were stolen, (supposed to be by a black man) on the *seventeenth* or *eighteenth* day of May.

It will be for you alone to determine, *whether this receipt was not contrived by the prisoner after his arrest, expressly to answer the purposes of the defence*, in connexion with the testimony of Williams and Millet. Should this be your opinion, then it will follow, that their testimony on the former trial, *in relation to this receipt, was wholly false.* It has been urged by the Counsel for the prisoner, that the testimony will not warrant us in saying, that the prisoner *procured* Williams and Millet to swear to the facts contained in the indictment. Independent of their testimony in relation to this procurement, can it be presumed, that they devised the facts, and swore to them voluntarily. On this subject, it will be your duty to examine the circumstances in the case, and determine whether the prisoner did induce or procure these men to swear in the manner stated in their testimony, on this trial.

On the whole, gentlemen, the case is left with you for decision. You will carefully examine and weigh all the circumstances, and determine the question of the prisoner's innocence or guilt, as your consciences shall dictate.

It being late at night, it was agreed by the counsel for the parties, that the jurors might seal their verdict, and the court adjourned.

The next day, on the opening of the court, the jurors returned a verdict against the prisoner, *recommending him to the mercy of the court*, to which *Stephen Dodge*, one of the jurors, as well as the rest, had subscribed his name. The jurors were called in the usual way, by the clerk, and all agreed to the verdict, and it was entered accordingly.

On the last day of the term, the prisoner was brought up to receive sentence, when his Counsel moved for a new trial, on an affidavit of *Stephen Dodge*, one of the jurors, stating,

1st. That when the jurors retired to deliberate, there was a diversity of opinion among them, and several, including the deponent, were in favor of an acquittal.

2d. After debating the question of the guilt or innocence of the prisoner, some of the jurors suggested, that if he should be found guilty, the court, most probably, would not imprison him *more than twenty days!*

3d. Under this impression, the deponent agreed to the verdict, *though he believed him not guilty*, and so would have declared, when he returned, but it was his impression, that the verdict could not be altered.

The Counsel on behalf of the prosecution, first objected to the reading of this affidavit, and after the court had given the Counsel for the prisoner leave to read the affidavit, the Counsel for the prosecution demonstrated to the court the extreme danger of suffering a juror, on a motion for a new trial, to impeach a verdict. Mr. Price, in an elegant address to the court, pointed out the general duties of a jury, and showed the impropriety of permitting jurors, after their discharge, to alter or destroy a verdict, by explanations which may every day be obtained, through fear, favor, or folly. The Supreme Court of this state, (4th Johns.

Rep. p. 487.) had determined that the affidavits of jurors, in a civil cause, are not to be received to impeach their verdict. The reason of the rule proved the necessity of applying it to criminal, as well as civil cases. Indeed, no civil case could afford as great temptation to corrupt or to be corrupted, as is sometimes presented by a criminal prosecution.

Hawkins & Simons contended, that, as the Counsel for the prisoner, when the jurors returned, were not present to poll the jury, (as the juror, had he been polled, would have dissented from the verdict,) the prisoner ought now to have the same privilege that he would have had, had the Counsel been present. Hawkins, as a further ground for, at least, suspending the sentence until the next term, suggested, that he should be able to show the court, that one of the jurors, during the recess of the court, and before he had heard all the testimony, declared, that in his opinion, the prisoner was guilty. This was prejudging the cause, and, if made out to the satisfaction of the court, it would be a good ground for a new trial.

By the Court. There are two motions before the court; one for a new trial, grounded on an affidavit of Stephen Dodge, one of the jurors: the other, for suspending the sentence until the next term, to show the court, that one of the jurors, during the recess of this court, and before hearing all the testimony, gave an opinion on the merits. This latter motion is grounded on the suggestion of Counsel only.

With regard to the first motion, it is known to the members of this court, that the trial commenced and progressed in a regular manner. When the jurors retired, the Counsel on both sides consented, that the jury should return a sealed verdict. The verdict was reduced to writing, the jurors subscribed their names and separated, and the next day returned, and the jurors being called, assented to the verdict, and it was entered in the usual manner. It is true, that the jurors were not polled, but this was the privilege of the prisoner, and it was the duty of his Counsel to have availed themselves thereof, had they deemed it necessary.

It being conceded, that the entry of the verdict was regular, the question arises, whether the court can and ought to interfere to set it aside, for the reasons disclosed in the affidavit. An important fact appears before us on record, that all the jurors have signed this verdict. This, in addition to the assent of the jurors, after their return, is the highest evidence we have of their agreement. If they did not agree, they should not have signed the verdict, and assented to it in open court.

Deciding this case then, on fixed and established principles, we are bound to say, that the *affidavit of a juror cannot be received in this court, to impeach a verdict, which he with his fellows has rendered.* The Supreme Court, by a train of decisions, has established this doctrine in civil cases. The reason why it should apply to criminal cases, in its full extent, is stronger. There would be much danger—much uncertainty, in the mode of trial by jury, should the jurors, or either of them, be allowed to destroy their own verdict. The motion for a new trial is therefore denied.

On the motion for a suspension of the sentence, we give no opinion on the matter suggested. It may be true; and to give the prisoner an opportunity of laying it regularly before the court, at the next term, we suspend his sentence.

The prisoner was then remanded to Bridewell, and during the present term, the keeper found concealed in the room of Francis, *instruments adapted to the purpose of breaking prison.* From every circumstance, it appeared, that a wicked conspiracy of persons unknown, without the prison, had been formed to aid *his* escape. He was then put in irons to await the sentence of the court.

On the last day of the term, the prisoner was put to the bar.

By the Court. Is there a motion to be made on behalf of John Francis?

No Counsel appeared; all was mute—The wife of Francis, the partner of his crimes and his woes, stood by the prisoner's box, suffused in tears, and seizing his hand in the phrenzy of despair, seemed to cast the last agonizing glance on the unfortunate though guilty man, standing alone, forsaken by every other friend. She was taken by the officers from the bar.

The affection and constancy of that sex in affliction, excites our admiration, and on an occasion like this, our feelings constrains us for a moment to forget the *criminal*, while we render an involuntary homage to the *woman.*

By the Court. John Francis, in the month of June last, you was tried in this court, on a charge for receiving stolen goods. On that trial, two persons were produced as witnesses on your behalf, who were instigated by you to commit wilful and corrupt perjury. Your purpose on that occasion, was answered, and you was acquitted.

At the last term, you was tried and found guilty of suborning those witnesses, and we are sorry to say, that on this latter trial, another witness appeared on your behalf, who, from every circumstance in the case, must have committed perjury. In addition to this, a receipt was produced by you on the former trial, sworn to by the witnesses suborned by you, which was falsely and wickedly devised and forged to answer the purposes of your defence. In your case, there is an accumulation of crimes which we have scarcely, if ever, witnessed in any case tried in this court.

The offence of which you have been convicted, although unusual in our courts, is one of the most corrupt and diabolical that can be

perpetrated in society, and calls loud for exemplary punishment.

We know not the reason for which the jury recommended you to mercy. The court has seen nothing in your case which requires a mitigation of punishment. We have the power to sentence you to the State Prison ten years, and no other reason has induced the court to *sentence you* for a shorter period, except the recommendation of the jury.

The sentence of the court is, that you, John Francis, be imprisoned in the State Prison seven years.

During this term, John Jones, a black, was indicted, tried, and found guilty, of obtaining two pieces of fine linen, of the value of $60, of John T. Duryee, by false pretences.

Duryee is a merchant, and kept a store at No. 100 Chatham-street. During the month of June last, the defendant, who had, about three months before, been a servant of Thomas Phœnix, esq. came to the store, and represented to Duryee, that Mrs. Phœnix, being unwell, had sent him for two of the finest pieces of linen he had. Duryee, having known him as a servant of Phœnix, and believing him then to be such, delivered the linen without hesitation.

Phœnix, a witness on behalf of the prosecution, swore that the defendant had been discharged from his service three months before, and that he never had any authority to get the linen.

By the examination of the defendant taken in the Police, it appears, that the wife of Phœnix never ordered him to get the linen; but that *John Francis* proposed to him to obtain it in the manner he did, and he would purchase it. After having procured the linen, he carried it to the store of Francis, who received it, but paid him nothing.

The linen was found in the house of Francis, and a part was cut up by his wife for shirts. Francis and his wife, in their several examinations, deny obtaining the property in the manner stated by Jones.

He was sentenced to the City Penitentiary one year.

Here is another proof, if proof were wanting, of the vile character of Francis.

Receivers of stolen goods—Perjurers—Suborners of Perjury, your souls are darkened, your consciences slumber, ye will not hearken to the eloquent precepts and solemn admonitions, which your God, through his ambassadors, in the sacred desk, is continually sounding in your ears. The dreadful end of the wicked, an approaching judgment, and all the horrors of the realms of darkness and despair, ye hear, but they pass by you "like the idle wind, which you regard not." Yet, be assured there is a God—a judgment—an awful eternity. Listen then, to the sacred divine, when he tells you of the dealings of that God, to the wicked *hereafter*. He speaks truth. That this God regards, and interferes with the affairs of mankind *here*, believe. The *EXAMPLE* is before you.

(HIGHWAY ROBBERY.)

WILLIAM HENRY, al dic. WILLIAM H. PALMER, THOMAS SMITH, AND EDWARD M'COLGAN'S CASE.

RODMAN, *Counsel for prosecution.*
PRICE, *Counsel for the prisoners.*

Countrymen, ignorant of the city, instead of referring to every stranger they may meet for information, concerning the residence of a citizen, ought rather to refer to Longworth's Directory.

The prisoners, who were foreigners, were indicted for a highway robbery, committed on Jacob Dayton, on the twenty-first day of July last. When arraigned, with the other prisoners, Edward M'Colgan said, "I took the money, but the other two knew nothing about it." They pleaded not guilty, and when all three were brought up for trial, M'Colgan, repeating his assertion concerning the two others, pleaded guilty.

Jacob Dayton, an old man, as we should judge, seventy, and not one of the most intelligent men of his age, was then sworn, as a witness on behalf of the prosecution, and said, "I live at Stammage, or Horseneck, in Connecticut. On last Sunday two weeks, (the 21st July) I came to this city, in which I am a stranger. The boat in which I came, touched at the New-Slip; and a short time after I arrived, I left the boat, and went to find a man in John-street, with whom I was acquainted. A short distance from the slip, I met that man, standing in the west corner of the box (*pointing to Henry*) who was a stranger to me, and inquired of him, whether he knew such a man, whom I named, living in John-street. He said, that he was well acquainted with the man, and would accompany me to his house, in that street. In a conversation which we had, I informed him of the place of my residence, and he said that he lived at Horseneck. A few minutes after I had fallen in his company, the other two prisoners, who were on the opposite side of the street, came across and joined us. They took me into a grocery, and I purchased some small thing—and to pay for it, took out my money, which they saw. I had $47, lacking a shilling, I think, in bills. They then carried me to the upper part of the city, near the rope-walks, and we went between the two rope-walks, and afterwards on the north side of them.* Henry

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* That this case may be understood, especially by strangers to our city, we think proper to state, that John-street runs from Broadway towards the East river, into Pearl-street, terminating about half a mile westward of the New-Slip. The rope-walks, above mentioned, are in the suburbs of the city, near the East river, and above two miles to the eastward of the New-slip. The place where this robbery was committed, is in or near a field, commonly called Stuyversant's Green, a part of

went aside from us a short distance, and one of the other prisoners then said to me, "Now give up—resign!" Immediately on saying this, he struck me on my arm, but with what he struck I cannot say. I was then struck on my head and shoulders, and knocked down, where I suppose I lay some time senseless. When I came to, I found my money gone, and immediately made an alarm by crying murder! I was carried to the house of one Case, and after the prisoners were taken up, they were brought in, and I immediately knew them. I am confident they are the same men—they were all concerned. I know not which of them took away the money."

After the introduction of testimony concerning the apprehension of the prisoners in their flight, Rodman rested the cause, and Price, as Counsel for the prisoners, abandoned their defence.

It appeared, that the prisoners in their flight kept near each other, and when they found the alarm increasing, pretended that they were in pursuit of a thief; and Henry, when about being taken, said that he had made great efforts to catch the d——d rascal. Henry Hebbern and John Hebbern, arrested their flight, and they were taken pale, trembling, and agitated, with the money in the possession of one of them.

They were sentenced to the State Prison for life.

SAMUEL MILLS, JOHN WILLIAMS, AND EDWARD GILGAR'S CASES.

However grave and respectable a man may be, yet should it appear that he went, voluntarily, into the haunts of licentiousness, where a personal injury was inflicted on him, on the traverse of an indictment for that injury, his credibility, for that reason, is in some measure affected.

Mills was indicted for a highway robbery committed on Frederick Merrill, on the third of July last. The prosecutor, a farmer of Staten-Island, of a respectable appearance, and apparently forty-five years of age, came to the city to witness the celebration of the succeeding day. Arriving late in the evening with a neighbour, and not being able to get lodging at places where they were acquainted, they resolved to travel the city during the night. It had been better for the prosecutor had they confined their rambles near Whitehall, but *to keep themselves awake*, it appeared they wandered to Corlaers-hook, to witness the nocturnal orgies of Venus. There, they went into several *lighted halls*, graced by the presence of many a *damsel bright*, and Neptune's favoured sons.

In one of these halls, the venerable Cyprian Priestess, presiding over the rites, accosted our child of *Ceres*, and implored him to offer a libation to Bacchus, preparatory to initiation into the mysteries of the temple. This rite performed, he implored her to tread with him the mazy dance "on the light fantastic toe:" while the voice of Apollo and all the muses resounded through the hall.

To drop the allusion, in which our *classic* readers will discover the *truth*, and our *modest* readers the *object*, we shall proceed to sober narration.

The prosecutor and his friend went into a grocery, and the prisoner was present, and according to the current of testimony, was the bar-keeper. Here some cider was purchased, and the prisoner saw the money of the prosecutor. His friend stepped out, and in a short time the prosecutor went in pursuit, but could not find him. Returning near the grocery, where his friend left him, he saw the prisoner, who had ascertained that he was going to Whitehall. The prisoner offered to accompany him to that place, and the other declined his company. Whereupon the prisoner, without any other provocation, immediately commenced an assault, struck him several times, and another joining the prisoner, the prosecutor was knocked down, his coat was torn open, and his pocket-book, which contained a considerable sum of money, forcibly taken from his waistcoat pockets.

The prosecutor cried for the watch, but received no assistance. Some persons, however, came along—pursuit was made, and the prisoner was seized by the prosecutor himself, and the watch coming to his assistance, the prisoner was secured. He was taken to a grocery, and pretended he knew nothing concerning the affair.

The prosecutor was the only witness to the robbery, or the identity of the prisoner.

A great number of witnesses, several of

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which is bounded on the west by Stanton-street, which runs from the Bowery to the East-river. The nearest building to the head of the rope-walks, is the house of Whitfield Case, (Stanton, corner of Arundel street,) about three hundred yards distant. Mrs. Case happened, providentially, to be looking for one of her children, and came upon one of the prisoners, who was watching at the head of the rope-walks, while the other two were, most probably, murdering the old gentleman. Receiving notice from their coadjutor, the other two came up, and the woman saw the old gentleman, at a distance, hardly able to stand, waving his hands in a supplicating manner, trying to point to the prisoners, and in a stifled tone crying murder! She spoke to the villains, called them such, and told them they had been robbing that old man, and that she would mark them. Whereupon, they fled precipitately—She cried murder! The alarm was soon caught by others—Murder was cried in every quarter, and in less than five minutes, above five hundred persons were in full chase. The prisoners fled towards the Bowery, and when they heard others cry, they also cried murder; but in vain. It was soon found that they were not the pursuers, and they were stopped. They were carried to the house of Case, and the prosecutor, bleeding from his wounds and almost distracted, immediately knew them. *Henry came out of State Prison about twenty days before!* What a school for improvement and reformation!

which were of a very suspicious cast, were produced on behalf of the prisoner, who proved in plain language, the substance of that above couched in metaphor, and succeeded in shifting the robbery from the prisoner, on the shoulders of one Robert Evans. The prosecutor in his relation, *modestly* kept *one part* out of view; but, on his cross-examination, would not positively deny what was asserted by the other witnesses, especially in relation to the *Priestess*. He stated, that he believed from what he saw, that several persons in and about the grocery, near which the robbery took place, were confederated together.

The jury acquitted the prisoner.

John Williams and Edward Gilgar, Irishmen, were indicted, tried, found guilty, and sentenced to the State Prison, each for seven years, for an assault and battery, committed on William Thompson, with an intent to rob.

It appeared, that on the night of the 27th of July, Thompson was at Corlaers-hook, and was in a cook-shop, and called for something to eat. Williams also came and called for some victuals, and although he was an utter stranger to Thompson, insisted that Thompson should pay his bill. Thompson refused; and after paying his own bill, from a pocket-book in view of Williams, went into a grocery, and was followed by the other. After some conversation, Williams inquired of Thompson where he was going, and was informed that he was coming into the western part of the city. Williams said that he was also going there, and offered to accompany the other, which offer was accepted. On their way, Gilgar fell in their company, and after proceeding to the vacant lots, between the eastern and western parts of the city, the two prisoners left Thompson a short distance behind, and conversed together in a language he did not understand. Being suspicious of them by reason of this conduct, Thompson took his pocket-book, and put it into his bosom. The prisoners returned, and demanded his pocket-book. They seized him, rummaged all his pockets, frequently requiring him to deliver his money, "*or it would be the worse for him.*" Thompson denied that he had any money, and at length succeeded in extricating himself from the ruffians, and fled. On his return, he met with two honest tars, who offered to accompany him down. These were followed by the prisoners, who commenced an assault on the three, and knocked one of the sailors down. They then fled, and the prosecutor, making diligent search, some time afterwards, found and recognized the prisoners, who were seized and secured by the Police officers.

These prisoners, with the three robbers, Palmer, Smith, and M'Colgan, were put in the prisoners' box together, on receiving sentence. The court observed, on that occasion, that until a short time past, their crimes were almost unheard of in this country. And that it was a just subject of felicitation, and reflected much honor on our countrymen, that the commission of such heinous offences was confined principally to foreigners.

(FORGERY.)

ISAAC VOSBURGH'S CASE.

RODMAN, *Counsel for the prosecution.*

B. GARDINER & SAMPSON, *Counsel for the prisoner.*

On the traverse of an indictment for the Forgery of a check on a bank, and for uttering and passing such check, knowing it to be forged, where from the general tenor of the whole check, it appears uncertain, whether the name of the person, to whom the money in the check is payable, is Banker, Barker, or Bunker, and in those counts in the indictment, on which the public prosecutor relies, a *fac simile* or imitation of the name of the payee is attempted to be made; on an objection to these counts, on the ground of a variance between the name in the check and that in the indictment, this was held by the court to be no variance, and mere matter of opinion and speculation.

It is incumbent on a prisoner who passes a false and forged check, and afterwards when called on by the person defrauded, to disclose the name of the person from whom he received it, denies that he passed such check, and disclaims all knowledge of the circumstances under which it was passed, *to account satisfactorily for the possession of such check;* nor will the general good character of such prisoner, in such case, be sufficient to repel the presumption of his guilt.

The prisoner was indicted under the statute, (1 vol. N. R. L. p. 404, § 1.) for the forgery of a check in these words and figures.

"No. 147,

"New-York, July 10th, 1816.

Cashier of the Merchants' Bank in the City of New-York, Pay Joseph B**ker, or bearer, fifty-five Dollars and seventy-six cents.

"ELIJAH SYNDAEL."

There were four counts in the indictment, the two first for the forgery, and the others for passing the said check, knowing it to be forged, with an intention to defraud the Merchants' Bank and (in the last count) Samuel Beech. On these two last counts the public prosecutor relied.

The name of the person to whom the money was made payable in the check, if detached from the check, spelt *Bunker*, but when the second and third letters in the name were compared with letters in writing in other parts of the check, it was doubtful whether that name was intended by the writer for Banker or Barker. The check was also crossed and defaced, and the name might be supposed either Bunker, Banker, or Barker. It appeared to be doubtful, by reason of these circumstances, which name was intended by the writer.

In the indictment the whole check was set forth *in hæc verba* in the several counts, and a *fac simile*, or imitation of the name B**ker, was, evidently, attempted by the writer.

It appeared in evidence, that the prisoner

came to the shop of Samuel Beech, (No. 4 Chatham-square,) a chair-maker, on the eleventh of July last, and offered to pass the check for the amount in money, alleging that he had received it from a man in Pearl-street, for a job of carting. The father-in-law of the prisoner, who lives at Hackensack, of whom Beech had purchased materials for his business, and with whom he was acquainted, was then present, and the prisoner gave as a reason why he did not go to the bank himself, that he wished to return to his house with his father. Beech scrupled to change the check, because he did not know the drawer; but on an assurance by the prisoner that it was good, Beech gave him the amount, retaining twenty-five cents for his trouble.

Calling at the bank with the check, Beech found that no such man as *Syndael* dealt with the bank, or had money there. *Syndael* could not be found, and Beech believed it to be a fictitious name.

After corroborating the testimony of Beech, Rodman rested the prosecution, when the defence was opened by Sampson, who stated, that in addition to proof of good character, the prisoner expected to prove circumstances to show, that he filled up a lot of ground near the Albany basin, for a man whom he did not know, that he had much trouble to get his pay, which amounted to thirty dollars, and that meeting with the man in one of the streets of this city, he paid him in this forged check, requiring the prisoner to pay him the difference in money, with which he complied.

A number of very respectable witnesses was called by the counsel for the prisoner, who proved the general good character of the prisoner and his connexions.

The principal testimony produced by the prisoner to account for his possession of the check, was that of James Vanderpool, and a brother-in-law of the prisoner. The former proved that he kept a grocery near the Albany basin, and had frequently seen the prisoner with other cartmen at work near that place. The brother-in-law proved, that since the confinement of the prisoner in Bridewell, he, the witness, had endeavoured to find *Swindle* (so he pronounced) by making inquiry in every part of the city, but no man could be found answering to that name. He also had made diligent search for the lot alleged to have been filled up by the prisoner, but was unable to find the place. Before the time the check was passed to Beech, he heard the prisoner say that he had received a check for such work.

The Counsel for the prisoner were about resting their defence, when the court intimated to the counsel, that here was a manifest defect, or, want of testimony on behalf of the prisoner. He had not satisfactorily accounted for his possession of the check conformable to the opening made by his counsel. So the court should charge the jury.

Gardiner raised an objection to the indictment, on the ground of a variance between the name of the payee in the check, and that set forth in the indictment. It was concluded, however, by the counsel, to urge this variance to the jury in summing up the evidence.

Beech and Job Copperthwaite were called on behalf of the prosecution, both of whom concurred in showing, that about three weeks after the check was passed by the prisoner, Beech with the other found him a considerable distance up the Bowery, and Beech asked him where the man lived, who gave the check he had passed. To this the prisoner replied, "What check?" Beech endeavoured to call to his recollection the circumstance, by mentioning the time, place, and occasion, when and where the check was passed, but the prisoner declared he knew nothing about the check, nor did he know where Chatham-square was. He further said, that he could prove that he never had such check. He appeared to be much agitated, and after some conversation, agreed to call on Beech the next day, at No. 4 Chatham-square, but never came.

The Counsel for the prisoner urged to the jury his acquittal, principally on two grounds: 1. There was a variance between the name of the payee in the check produced in evidence, and that set forth in the indictment. The name in the check was *Bunker*; that in the indictment was different; and, if the jury so believed, they were bound to acquit the prisoner. It was an invariable rule in criminal proceedings, that the name laid in the indictment should comport with that in the instrument produced in evidence; and in the present case, should the jury believe that the name in the check was *Bunker*, and the name in the indictment was any other, there was an end of the question, and the prisoner could not be found guilty. The counsel cited Hawkins P. C. p. 341. to show that where by wrong spelling, or an omission of a letter, the sense or meaning of a word was changed, the variance produced was fatal.

2. There was no evidence produced, showing that the prisoner *knew the check to be a forgery*. This was an important allegation in the indictment, and required proof, clear and conclusive. The counsel, under this head, anticipated the argument about to be urged by the public prosecutor, founded on the prisoner's denial of having given the check, by *suggesting*, that he had been advised so to do by a person then in his company, and that this denial took place in the moment of alarm and perturbation of mind. At any rate, the prisoner was on trial for passing this check, knowing it to be forged, not for telling a falsehood: and the counsel conjured the jury, by every consideration which could be urged, to acquit the prisoner.

Rodman argued, that there was no variance between the name of the payee in the check, and that set forth in the indictment. The name in the check was an imitation, and the intention of the clerk was to make a *fac simile*. But even should the jury believe, that the imitation was not successful, and the name in the check was different from that in the count, still, the variance was wholly immaterial, inasmuch as the check is also payable to bearer, and is described otherwise with sufficient certainty. It was a general rule in criminal pleading, that if the omission of a letter or wrong spelling, did not alter the sense, such variance will not vitiate. He cited, 1 Starkie's Crim. Plead. p. 94.

He answered the argument of the opposite counsel. in relation to the knowledge of the prisoner that the check was forged, by saying, that it was not to be expected that we could derive the knowledge of a man in cases like the present, from any other source than his conduct in relation to the affair. The jury were to form a judgment from the circumstances. And he averred that the strong circumstances of guilt in this case, were wholly inconsistent with the innocence of the prisoner.

His Honor the Mayor charged the jury, that the evidence adduced against the prisoner, applied to the two last counts in the indictment, for passing a false and forged check on the Merchants' Bank to Samuel Beech, *knowing it to be forged*.

The jury had heard the legal objection raised by the counsel for the prisoner, grounded on a supposed variance between the name of the payee in the check produced in evidence, and that set forth in the indictment. It was evident, by inspecting this instrument and the indictment, that the check is copied verbatim, and the name of the payee, which may be read Banker, Barker, or Bunker, is attempted to be imitated. The name standing by itself is Bunker; but when we refer to other parts of the instrument, and compare the letters, it would seem that the name was either Barker or Banker. Whether, therefore, the imitation is successful or not, appears to the court immaterial, and a matter of mere speculation and opinion. Besides, the jury should consider, that this is a mere formal objection, and has no relation to the merits; and although in criminal proceedings it must be allowed that much strictness is necessary, and the forms of law are to be adhered to, yet the court is bound to say, that this is not such an objection as ought to entitle the prisoner to an acquittal. The only material question in this case, is, whether the prisoner at the time he passed this check knew it to be a forgery. It must be obvious to the jury, that it is impossible to prove this knowledge except from the circumstances in this case. From these, the inference of guilt or innocence is to be drawn. His Honor here detailed the circumstances against, and in favor of the prisoner.

He had not accounted in a satisfactory manner how he obtained possession of this check. He had not even shown where the lot of ground was, for the filling up of which he alleges he received the check. And when called on by Beach and Copperthwaite, he denied that he passed it, and said, he could prove that it was never in his possession. This last was a strong circumstance against him; a resort to falsehood and a denial of the truth, are generally the result of a consciousness of guilt.

The good character of the prisoner had been satisfactorily shown. In some, but principally in doubtful cases, this was important. Should the jury believe this to be a doubtful case, then it would be their duty to acquit, otherwise, to find the prisoner guilty.

He was found guilty, and sentenced to the State Prison seven years.

(FORGERY.)

LEVI JAMES, JOHN DECKER, EDWARD SKEFFINGTON & DAVID CAHILL'S CASES.

RODMAN, *Counsel for the three Prosecutions.*

When an illiterate man merely passes a counterfeit bill, and the circumstances in the case, upon which the public prosecutor founds the *scienter*, are slight, the general good character of the prisoner will be sufficient to repel the presumption of guilt.

The prisoners were indicted and tried for forgery and passing counterfeit bills, and the three last named were found guilty of that offence, and sentenced to the State-Prison, each for seven years. The two first named were indicted separately; the two others jointly.

Their crime consisted in passing bank bills which had been altered from a less to a greater denomination. The bills thus passed were altered from genuine bills of one or two dollars to tens, by preparing on thin paper the word and number *ten*, and placing them over the corresponding word and number in the bill altered, with some glutinous substance. In some of these bills the word *ten*, placed over the *one*, appeared to have been done with a copper-plate, and the corresponding alterations were so ingeniously executed that, without strict scrutiny, many persons, especially those unacquainted with the respective bank paper, were liable to be deceived. In holding them up to the light, or, by introducing the point of a knife under the word or number *ten*, the deception became apparent. It also appeared, that before fixing the spurious parts over the parts in the altered bill, some device was used for drawing out, or defacing, the word and number from the genuine bill.

Levi James is a journeyman shoemaker, and does not understand reading or writing. His general good character was shown on the trial.

He went, with another, into the grocery store of Michael Ward, in Market-street, at about nine o'clock in the evening; and, after calling for five small glasses of liquor, passed a counterfeit $10 bill on the bank of America to Ward and received the change. Ward soon after ascertained, that it was bad, and went in pursuit of the prisoner, and found him at Corlaer's Hook. He admitted that he passed the bill, and in his examination before the police, alleged that the bill was passed to him the evening before, by one William Simons.

No other circumstances, showing that the prisoner knew the bill to be counterfeit, appeared on the trial, and his honor the Mayor charged the jury, that the only question for their decision was, whether the prisoner knew the bill to be counterfeit. After adverting to the circumstances in the case, he concluded by charging the jury, that the general good character of the prisoner, in the opinion of the court, was sufficient to repel the presumption of his guilt.

He was acquitted.

John Decker passed to Isaac Buckhout a counterfeit bill of $10 on the Phœnix Bank of Hartford, for a pair of shoes, and received $7.50 in change. The prisoner, at the time he passed the bill, informed Buckhout and his clerk, that his name was *David Williams*, and that he lived at No. 42 Pump-street. Buckhout ascertained that the bill was counterfeit, and went to the house in Pump-street, but no such man as the prisoner resided there. Some time afterwards, he found the prisoner at Corlaer's Hook, who first denied that he passed the bill, but shortly after offered to exchange it, and give a genuine bill in return. While Buckhout was conversing with him on the subject, he escaped, but was afterwards apprehended.

David Cahill and Edward Skeffington, a short time before the trial, went into a tavern in the ninth ward of this city; and after calling for two glasses of punch, passed a counterfeit $10 bill on the Catskill Bank, to David H. Robinson, who attended the bar. Cahill delivered the bill, and when Robinson brought the change Skeffington received it. Robinson carried the bill in the chamber, and showed it to John C. Radcliff, who pronounced it bad; and on the return of Robinson to the bar, the prisoners had departed.

It appeared by the testimony of Mary Penson, who keeps a tavern within a short distance of that where the prisoners passed the other bill to Robinson—that they came a short time after they had passed the other bill, and called for two glasses of punch, and passed to her a $10 bill of the same description as the other. She went to the house of a neighbor to get the change, and when she returned the prisoner, who delivered her the bill, was gone, and the other remained and received the change. Whether the person who remained and received the change was Skeffington, she did not swear positively, but thought it was; but she was positive that both the prisoners were concerned in passing the bill.

Cahill was apprehended in Fourth-street, by Joseph Maddon, a constable, and Skeffington at one of the dancing-houses at Corlaer's-Hook. In a pocket-book, found in the possession of Skeffington, produced on the trial, there were found several pieces of bills, cut from others, expressly adapted to the purpose of altering bills from a less to a greater denomination. He offered the Police-officers a considerable sum if they would permit him to escape.

On the part of Cahill, testimony of a very *doubtful complexion* was introduced, showing, that he kept a grocery at Corlaer's-Hook, and that the day before the counterfeit bill was passed, a sailor came and passed a bill of the same denomination on the Catskill Bank as that passed to Robinson. The next day, at about nine o'clock in the morning, the prisoner took the bill, to carry to his washerwoman, who lived a short distance from the grocery.

It appeared that Robinson lived about three miles from Corlaer's-Hook, and his honor the Mayor charged the jury, that the circumstances of guilt against Skeffington were very strong, and the principal question applicable to Cahill was, whether he was concerned with the other in passing the bills.

LEWIS SMITH & WILLIAM HORSELY, *al. dic.* ELISHA SANDER'S CASES.

The testimony of an accomplice in a felony is entitled to credit, if sufficiently corroborated by other testimony.

The prisoners were severally indicted, tried, found guilty and sentenced to the State-Prison, each for seven years, for passing counterfeit bank bills.

In the case of Lewis Smith it appeared, by the testimony of Joseph Price, that he was met by the prisoner in Lombardy-street, who asked him if he wished to make a *speck*. Soon after, the prisoner delivered to Price a counterfeit $5 bill on the Bank of New-York, and offered him a dollar if he would pass the same. Price enquired of him why he did not pass it himself—to which he replied, that he was too well known about there. He also delivered to Price a genuine $10 bill, to pass in case the counterfeit bill which he should offer, should be disputed. They walked together until they came into the vicinity of Love-lane, which is almost at the head of the Bowery, and above two miles from Lombardy-street. Price went into the grocery store of Matthew Horn, and passed the counterfeit bill for a dozen Spanish segars. Peter A. Hagerman, to whom the bill was presented, scrupled the bill; and, while he was examining it, the prisoner came in and called for a glass of spirits. Hagerman referred the bill to the pri-

soner to examine, who held it up to the light and said, "Yes, it is a good bill, and if I had the money I would change it—I *warrant* that it is good." While he continued in the store, he had no conversation with Price, and Hagerman supposed they were strangers to each other. In about half an hour after the prisoner left the store, he returned back on some pretence, but, no doubt, his object was to ascertain whether the deception had been discovered. It appeared that a short time after Price left the store, fearing that he should be apprehended, or for some other reason which did not appear in testimony, he returned to the store of Horne, and took back the counterfeit bill, giving therefor the genuine bill before received of Smith. He afterwards made application to the Police officers, and the prisoner was arrested.

In his examination the prisoner denied that he went into any grocery store in that part of the city where the counterfeit bill was passed: It appeared by the testimony on behalf of the prisoner, that he was engaged in the business of enlisting seamen for the navy, and the rendezvous was in or about Market-street. Price had also been engaged in the same business; and, a short time before the bill was passed, had been in partnership with the prisoner. Price, after the apprehension of the prisoner, exulted at his misfortune, and invited one of his comrades to help him drink the "last of old Smith's $10 bill." It clearly appeared that Price was an accomplice, and his Honor the Mayor charged the jury, that, although he ought to be considered in that light, yet should the jury find his statement corroborated by the facts and circumstances in the case, taken in connexion, it would be their duty to credit his testimony and convict the prisoner.

William Horsely, otherwise called Elisha Sanders, went into the grocery of James Montgomery, No. 17 Ferry-street, and purchased two dozen segars, and offered a counterfeit bill of $5 on the Bank of New-York. Montgomery being suspicious of the bill, went to a neighbor, a judge of bills, who pronounced it bad. On his return, he found the prisoner about making off without his change. Montgomery soon overtook him; and John M. Bloodgood, a neighbor of Montgomery, who was present, and saw the prisoner with his hand closed, struck him on the hand, which he immediately put to his mouth. Bloodgood immediately seized and choked him, and before he could swallow what he had put into his mouth, took therefrom another $5 counterfeit bill on the same bank. The prisoner begged them to desist from violence, as *he* had to suffer for his conduct.

The Court, in pronouncing sentence on the criminals convicted for passing counterfeit money, observed that some time ago, they had hoped that a check was put to the commission of that offence. It was, however, a subject of regret that the evil had increased to an alarming degree. To exercise lenity and forbearance in such cases, they deemed inconsistent with the general good, and they were determined, for the purpose of repressing the crime, to make examples of such as might hereafter be convicted.

ROSWELL SALTONSTALL'S CASE.

RODMAN & GRIFFEN, *Counsel for the Prosecution.*

BURR, WYMAN & PRICE, *Counsel for the Defendant.*

A witness is not bound to answer a question, the answer to which, if true, might have a tendency either of disgracing or criminating himself.

The defendant was indicted for the forgery of a writing, described in the indictment, as an instrument in writing obligatory, in the form and semblance of a letter, in these words and figures:

"*New-York*, 28 *May*, 1816.

Sir—I have been informed, that you intend to bring a chancery suit against me and your brother William. In order to prevent any trouble in the family, I would propose to give $500, on your signing a general acquittance.

"WM. HANDY.

"*Mr. R. Saltonstall, New-York.*"

It appeared in evidence, that the defendant is a man of a very singular, eccentric disposition. Harboring in his mind certain imaginary injuries, supposed to have been inflicted on him by those who inherited his father's estate, he was on all occasions very vehement against the members of the family in possession of property, to which he considered himself entitled, but of which he was destitute.

Dr. William Handy, a very respectable gentleman in this city, is the brother-in-law of the defendant; and Saltstonstall, being a good penman, was engaged in the office of Gurdon W. Lathrop, esq. an attorney, as a clerk or writer.

The story of his supposed wrongs from Dr. Handy was continually told and repeated to the students; who understood that the idea of a chancery suit against Handy, floated in the imagination of the defendant, by night and day. Being young and inconsiderate; they contrived the letter above set forth, which was written by one of them and placed on the table of Salstonstall, as a quiz or imposition, calculated to make merriment for themselves. On the return of the defendant he enquired, with much apparent concern, who had brought that letter, and was told by the students that it was a little red-headed boy. The defendant thereupon declared, that it was Dr. Handy's boy; and, believing the letter genuine, was wrapt in ecstacy, and elevated to the clouds. He went to several of the friends and acquaintances of the doctor and exhibited the letter, declaring it was genuine; and, in their presence, compared

it with other letters of the doctor, then in his possession, to convince them of its authenticity. One of the persons, to whom he exhibited the letter, advised him to close with the proposition therein contained; but the defendant declared he would not settle for $15,000.

The doctor, hearing of the letter, knew it to be a forgery, and considering himself aggrieved, means were devised by his friends, to obtain possession thereof, as the foundation of a criminal prosecution.

One of the students in the office, on being sworn as a witness on behalf of the defendant, stated that the defendant did not write the letter, but that another person did.

The Counsel on behalf of the prosecution then put this question to the witness—What person did write that letter?

By the Court, to the Witness. Can you answer that question without implicating yourself?

Witness. I cannot.*

By the Court. The enquiry cannot be pursued.

The Counsel on behalf of the prosecution did not press a conviction, and the defendant was immediately acquitted.

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* We cannot perceive any reason for the reluctance at answering this question candidly. There was no felonious intention in writing the letter; and it is well known that the *evil intent*, alone, constitutes the crime. This was an inconsiderate act, designed and executed for the purpose of sport; but in case of the death or absence of those alone cognizant to the transaction, it might have been attended with serious consequences to the defendant. The only point of view in which it can be considered at all reprehensible is, that measures were not taken to undeceive the defendant and prevent a serious prosecution. Young men, however, must learn. *Rep.*

SUMMARY.

Cornelius Simmons, on the 13th of July last, stole a piece of broadcloth, of the value of 30 dollars, the property of John N. Wardle, and carried it to the house of Jane Loring, and made presents to two girls of a sufficient quantity to make them coats. Wardle came to the Police, made his complaint, and Hays, the high-constable, without even hearing a description of the cloth, took him immediately to the place where the thief was, and found the cloth. The prisoner attempted to escape, but was seized.

Samuel De Witt, about a fortnight before his trial, stole from an aged gentleman, by the name of James Webster, from New-Jersey, a pocket-book, containing about 200 dollars, under the most aggravated circumstances. Webster, with a friend and relation of his, living in this city, like other countrymen, for idle curiosity, went one evening to Corlaer's-hook, to see what might be seen. They went into several dancing-houses, and at length met with the prisoner in a grocery. He pretended that he was acquainted at Elizabeth-town, where Webster resided, manifested much familiarity towards him, and at length said, "Come, old dadda, I'll carry you to see some of our Elizabeth-town girls." He took him round his waist, in a very *friendly manner*, and they walked out of the grocery together. At this time, it appeared, that the friend of Webster was either absent, or his attention was directed elsewhere. After the prisoner had taken Webster a sufficient distance from the grocery, with his hands round his waist, he suddenly forced his hand into the trowsers pocket of his companion, and seized his pocket-book. Webster, like other old men, also thought of his money, and forcing his own hand into his own pocket, (as he had a right to do) seized the pocket-book, and struggled hard to retain his gripe. The muscular powers of the thief prevailed, and he ran off with his prize, pursued by Webster until the latter was out of breath. An alarm was made and James Carman saw him, and endeavored to stop him in his flight, when he pretended that he was in pursuit of the thief, and said—"Good G—d! how sorry I am—he has just jumped over that fence." It appeared, that he made his escape at that time, and was afterwards apprehended by Azel Conklin, a constable, at Whitehall.

Lewis Roux, a Frenchman, stole from Chester Belding, a gentleman from the city of Hudson, a pocket-book, containing about 40 dollars, in bank bills, and divers papers. Belding was attending an auction held in Pearl-street, near the auction-store of Hoffman and Glass. There was a great collection of merchants and others. A man was unheading a cask, and Belding was in a stooping posture, intent on the contents of the cask. He felt a sudden jog on his side, as if some person had inadvertently interfered in passing by. Turning suddenly round, Belding saw the prisoner with the pocket-book in his hand, made immediate pursuit, with others, kept his eye fixed on the prisoner, who, finding himself partly headed and closely pressed, at length stopped short, and taking the pocket-book from his bosom, said to Belding, "Here, sir, is your pocket-book." He was immediately taken to the Police.

Previous to the trial, this prisoner committed a crime far worse than the preceding. He, most probably, knew that Belding was attending from a distance, and hoped, if the trial could be delayed, that Belding might return home and he might escape. A pretence was therefore formed, that there was material testimony which he expected to get from Philadelphia, by which he could prove that he found the pocket-book in the street. He made an affidavit (*after it was written*) containing such facts, upon which the court postponed his trial for a few days.

Francis Silva, a Galician from Spain, about twenty-three years of age, was engaged as a workman in the chemical manufactory of Joel Post, Jotham Post, and William Innis, of this city. For some time previous to his detection, he had been in the habit of stealing considerable quantities of medicine, and, in the whole, stole to the amount of 300 dolls. John Price, the foreman, missed the articles on or about the twenty-fifth of March, and knowing that they must have been stolen by the prisoner, charged him with the theft. He confessed the whole; before which, however, in a fit of despair, he swallowed three ounces of Calomel, which was in a vial of water, a quantity sufficient to have killed twenty men. To counteract the effects of this poison, Price, as soon as he had ascertained that the prisoner had swallowed the Calomel, administered ten grains of Tartar Emetic and salts. The Calomel diffused a cold chill through the system, and the prisoner was near the verge of dissolution, when the remedy administered by Price operated, and the poison was discharged. Shortly after the effects of the Calomel and its antidote had subsided, he carried Price to his dwelling-house, and opening his trunk, delivered a quantity of Calomel, Red percipitate, Lunar Caustic, and other articles of medicine to the amount of 50 dollars.

Silva, and the three prisoners last above named, were each indicted, tried, found guilty, and sentenced to the State Prison ten years. The two first named, had lately been liberated from that place.

Elias Lent and *Jonas Stansbury*, on the night of the

20th of July, went into the dwelling-house of Henry Huyzer, in Leonard-street, and while the owner and his family were asleep, stripped the house of every article of clothing they could find, not excepting the clothes which Huyzer and his family had worn the day before. It appeared that Lent was a boarder, and knew the situation of the house.

James Thomas, a black, on the 20th of July, stole from the dwelling-house of Samuel A. Lawrence, a gentleman residing at No. 67 Pine-street, a surtout coat of the value of 18 dolls. and a hat of the value of 10 dolls. About a fortnight before the theft, he had lived with Lawrence as a servant, and before stealing the articles, went to the bureau and rummaged it to find money. He confessed the felony.

John Gover, a black, was a hand on board the brig General Scott, commanded by Joseph Auze. The prisoner stole from the vessel the captain's watch, of the value of 20 dolls, and put it into his bosom, and it was taken therefrom by Thomas Cornell, a marshal.

John Thompson, while Henry Hamilton was asleep on Pike-street wharf, in the evening, in a situation too awkward and comical to mention, picked his fob, (the garment containing which, did not adhere very close to the prisoner) of a double-cased silver watch, to which was attached a gold chain and key, all of the value of 35 dolls. Jonathan Ellis, a sailor, who happened to come on the wharf, ascertained by waking Hamilton that he had lost his watch, and suspecting the prisoner, whom he had seen rummaging about near Hamilton, searched the prisoner, and found the watch in his left pocket, and restored it to the owner. The prisoner pretended drunkenness, and fell between some timber. Hamilton detained him, while Ellis went and called a watchman, and the prisoner was secured.

Michael Boyle was a boarder at the house of Mrs. Davis, (277 Water-st.) and about a week before the trial stole a surtout coat, of the value of 18 dolls. the property of Legrand Jennings, and a hat, the property of Samuel Lummis, boarders at the same place. On his detection, he acknowledged that he had taken the articles to raise money, and had sold the coat for 6 dolls. The owners never obtained their property.

Caty Battis, a black, went into the house of John Jaque, another black, while he was absent, and Mary Ann Johnson was keeping house. The prisoner asked permission to remain all night, to which the housekeeper reluctantly assented. She rose at about five in the morning, and stole a watch of the value of 20 dolls. the property of Jaque, and departed.

John Prout, a black, went into a ship-yard in this city, on the North-river side, and stole several saws of the value of 40 dolls. the property of John Newhouse. The prisoner left some for safe-keeping in one place, and attempted to sell some or one of them. The owners soon reclaimed their property, and the thief was apprehended. Prout, and the seven prisoners next immediately preceding, were indicted, tried, found guilty, and sentenced to the State Prison, each for three years and a day.

Amelia Connelly, otherwise called Johnson, a woman between sixty and seventy years of age, was indicted, tried, found guilty, and sentenced to the State Prison five years, for stealing a double-cased silver watch, chain and key, all of the value of 57 dolls. fourteen silver teaspoons, two table-spoons, and a silver milk-pot, all of the value of 40 dolls, the property of Abraham Bussy. The prosecutor stated, that on the night of the 21st of July, some person, by means unknown to him, must have entered his house and stole the property. A part of the articles was found in the possession of the prisoner, and she had pawned a part to a Mrs. Bates. Bussy made application to the Police; Montgomery, one of the officers, went in pursuit of the thief; a part of the goods were found as aforesaid, and the thief taken. She had, then, lately been discharged from the State Prison.

PETIT LARCENY.

Dennis M'Cready, Amanda Swan, (both children about 12 years of age) Marcellan and James Lucas, *both foreigners*, Prince Gedney, James Allison, Mary-Ann Laight, James Pemble, Henry Bates, John Thomas, Mary Scott, and Mary M'Gee, were each sentenced to the city penitentiary, the two first for 18 and the remainder for 6 months each.

John W. Gregwaw, Robert Marshal, and David Pugsley, were sentenced to the same place for shorter periods of time; and for the same offence, Jacob Mosier was fined 20 dolls.

Marcellan and James Lucas, in lieu of the punishment inflicted by the court, have the privilege of leaving this country forever, should an opportunity of sending them away be found.

DISORDERLY HOUSES.

Joanna Clark and *James Kelly*, were severally indicted, tried, found guilty, and fined, the former 250 dolls. and the latter 50 dolls. and to give security for his good behaviour for one year.

In the case of Joanna Clark, it appeared that the defendant, previous to the first of May last, had been in the habit of keeping a house of ill-fame in different parts of the city. She had kept a house of this description in Delancy-street, and wishing to remove the establishment to a more eligible situation, made application to Andrew Dooly, for a lease of a house belonging to him, at No. 27 Cross-street, directly opposite the house in which Dooly resided. He refused the application. She then applied to two men by the name of Shaw and Parker, and a device was contrived to get her in possession of property indirectly, which the owner had refused to lease her. A lease was taken by them of the premises, from the first of May last, and the defendant became their under tenant at the same rent which they paid. She paid, however, in advance, and they saved the interest of the money.

By the testimony of Dooly, and a number of other witnesses, the offence was proved in general point of view, and a woman was introduced as a witness on behalf of the prosecution, who stated, that, one night she went to the house for her husband, when the defendant denied he was there, but that she went into a chamber above and found him in company with another woman.

Attempts were made on behalf of the defendant to show that the part of the house complained of, and from which the noise proceeded, was leased to and in possession of David Bates, as a grocery; but it clearly appeared by the current of testimony, that this grocery was connected with, if not a part of, the same establishment. *Watchmen*, travelling the rounds in that vicinity, were introduced as witnesses to exculpate the defendant. Although frequent noises and riots in and round the house, at all times of night, were proved by respectable witnesses, yet, the Watchmen *did not hear—did not see!* By the general tenor of the testimony, however, on behalf of the defendant, it appeared that she *was* a *quiet* woman, paid her debts, and kept a *quiet house*—for one of the above description.

The Court, in pronouncing sentence, stated, that most probably her punishment would be mitigated if she relinquished possession of the house to the owner, as they understood she had offered to do.

James Kelly lives opposite to Vauxhall-Garden. He was in the habit of beating his wife, and the cry of *murder* was often heard. Divers mobs and riots were frequently raised round his house, to the great annoyance of the neighbours.

OBTAINING GOODS BY FALSE PRETENCES.

Francis Henry was convicted for obtaining meat, at divers times, of John Davenport, pretending that Herman Le Roy, Jun. with whom he had lived as a servant, had sent him, whereas Le Roy gave him the money to purchase the same, which he expended.

He was sentenced to the Penitentiary one year.